

DOCUMENT RESUME

ED 074 928

HE 003 899

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TITLE Collective Bargaining and University Governance.
PUB DATE 15 Jan 73
NOTE 16p.; Speech presented at the annual meeting of the Association of American Colleges (San Francisco, January 15, 1973)

EDRS PRICE MF-\$0.65 HC-\$3.29
DESCRIPTORS *Collective Bargaining; *Collective Negotiation; *College Faculty; Governance; *Higher Education; Professors; Speeches; *Teacher Welfare

ABSTRACT

The author of the present document presents a discussion of faculty collective bargaining within the framework of arguments against unionism which in some instances he refutes as being untrue and in others as being beneficial to the higher education society as a whole. The arguments against faculty unionism, which are referred to in this speech as "monsters", are: (1) as the system of governance will become more explicit, it will also become increasingly centralized; (2) collective bargaining, while protecting faculty from unfair procedures, will also lower the quality of teaching personnel; (3) collective bargaining promotes the deterioration of departmental and school autonomy; (4) collective bargaining thrusts administrators into an unfamiliar and unwanted management role; (5) unionization will inevitably narrow the scope of authority given to faculty senates or the senate will be dominated by the union; (6) the adversary relationship implicit in collective bargaining is inimical to collegiality; and (7) collective bargaining is a form of compromise, inferior to consensus and the reasoning together that was part of traditional academic governance procedures. (Author/HS)

ED 074928

PRESENTATION

at

ANNUAL MEETING

of the

ASSOCIATION OF AMERICAN COLLEGES

January 15, 1973

San Francisco Hilton Hotel

COLLECTIVE BARGAINING AND

UNIVERSITY GOVERNANCE

by

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SESSION: The Growing Impact of National Faculty
Associations on Institutional Autonomy,
Authority and Responsibility

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COLLECTIVE BARGAINING AND UNIVERSITY GOVERNANCE

I speak this morning of Academic Collective Bargaining in the context of my experience at Rutgers University, where I have been President for the past year, and my experience at Bennington College, where I served as President for six years. My observations are founded on experience in two very different institutions - one private, one public; one 600 students, one 37,000 students; one without collective bargaining, one with. In my judgment, the faculty governance problems are not very different in these two contexts. You will see that conclusion reflected throughout my remarks today.

I believe that my experience may tell you something about the nature of the problems which unionization poses to the academic community. I believe many of our fears are exaggerated. The chamber of horrors we are told we will enter during a period of unionization turns out to be just like the room we have been living in without unionization. On the whole, I am very optimistic about the impact faculty unionization has on higher education.

My observations are, I emphasize, based on just one year's experience with the AAUP bargaining unit at Rutgers University. I do not know how much that colors my experience - at least I am not sure. I also point out that my conclusions reflect our very good fortune in having what is essentially a procedural contract.

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It covers economic conditions of employment and academic due process. For the most part, it leaves the selection, appointment and promotion of faculty, as well as the development of all aspects of educational policy, to the traditional academic governance structures, regulated by University regulations outside the purview of the contract. What our contract provides, in other words, is only an economic package and a procedure to ensure due process within the existing structure of University governance.

Thus, I am talking about a specific bargaining unit and a special kind of contract situation, and I do not want anyone to suppose that my remarks are intended to cover anything beyond these special circumstances. Within these limitations, I want to now consider seven of the monsters which are most often alluded to in the literature on this subject - the monsters said to be found in the chamber of horrors known as academic bargaining.

The first is that as the system of governance will become more explicit, it will become increasingly centralized. It is argued that ambiguity and the willingness to leave certain key governance questions unanswered have been important to the rise of faculty power. Explicitness and the demand for legally binding relationships will lead to a renaissance of governing board power and imperil the premise of shared authority.

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This is one of the dangers which one of my presidential colleagues has suggested flows from trade unionism. My response is that this tendency in academic life is not a consequence of unionization, but a consequence of other underlying factors in our universities and in our culture.

The fiscal stringencies of our time have led academic governing boards to look more closely at the budgets and the operations of educational institutions and, for the first time, to ask, "what is happening here?" This is not a product of trade unionism, however, it was happening at Bennington College, without a trade union, before I left. It is now happening at Rutgers University, with a collective bargaining unit.

I believe increasing explicitness in governance relationship is a sound development. I do not think that it imperils the faculty's prerogatives, or that it involves a significant renaissance of the power of governing boards. Our board, at least, has not significantly changed its relationship to the governance of the institution because of a collective bargaining. What I believe our board and others are doing is simply looking more closely at questions which once were overlooked. It is all to the good - not something to be concerned about, but something to be pleased with - that trustees take their obligations as members of governing boards more seriously.

If we are really going to have a system of shared power, the

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governing board, as a board which shares power, must itself understand the nature and extent of its power, as should the faculty. The most important distinction to be made, is that in the context of collective bargaining, the sharing of power becomes a matter of right rather than an **exercise** in beneficence.

This development I take to be valuable. It cuts both ways, of course. Faculties, which for many years dominated institutions without anyone knowing they had the right to, are now having to face the fact that they are going to have to share that power with the people who have had the legal right to exercise it. On the other hand, governing boards, which for many years sat back and thought they were delegating powers and that the delegees were the beneficiaries of their largess, are now having to face the fact that the delegation of power was a rightful delegation - and that it is now in many instances, a requirement of law.

The second effect which is premised to flow from academic unionization is that "In those institutions in which untidy, unsystematic processes of peer evaluation have worked with demonstrated success, the introduction of procedures that can be defended before an arbitrator will incur a real cost in quality." The suggestion is that as soon as a collective bargaining contract imposes conditions of academic due process, you are sure to have the quality of the faculty go down. Again,

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I have just not seen that demonstrated, and I do not believe it is a necessary consequence of academic collective bargaining.

I will admit that there is a possibility that we will go in that direction. Depending upon the nature of our economy and the good sense and the good judgment of the people using this system of academic due process, we may, indeed, find ourselves in a position where we have created a structure in which no proposal for reappointment can be defeated. That is a possibility, but I have not seen it actualized. And let me further add that, to the degree that that possibility exists, it existed at Bennington College without a trade union in the same way that it exists at Rutgers with a collective bargaining contract.

The pressure that is leading us in this direction has little or nothing to do with trade unionism. It has to do with a loss of faith in the institutional mechanisms of peer evaluation and it has to do with the stringency of our financial situation, with the academic depression which is upon us. To lay this tendency at the door of unionization is, I believe, thoroughly mistaken. It may exist and prosper with or without a trade union, and it may be overcome with or without a trade union.

The real difficulty is that when the amalgam of trust,

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sympathy, and mutual understanding - the social cement that holds academic departments and the University as a whole together - begins to dissolve and you have to replace it with procedures and technical rules of practice, there suddenly appear on the scene, not jail house lawyers, but school house lawyers. Suddenly everyone in the faculty becomes a lawyer of sorts. And in my book, there is no one more legalistic in the pejorative sense, than the academic non-lawyer. What we are suffering from is not trade unionism, but legalism - we suffer a form of creeping legalism.

The widespread supposition found in universities is that every decision taken within the University at any time should be covered by means of some precise and explicit set of rules and that due process means legal process, including adversarial proceedings with the right to counsel, with the right to briefs, with the right to every other condition of due process the law has ever known under any circumstance.

This distorted notion is in sharp contrast to what due process in law actually means. Legal due process does not prescribe a single rigid set of procedures and practices for any and all circumstances. It rather prescribes a process appropriate to the particular circumstances in which a decision is to be reached. Due process differs with each discrete set of circumstances and conditions in which a decision takes place.

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It is that process which is fair, just and appropriate to the resolution of a particular problem in a particular institutional setting and it will vary with the nature of the particular problem and the setting.

What is happening in academic life today is that faculty members and others who, over a period of time, have used no fixed process, who have in fact relied on informal, flexible relationships of trust and good faith (which worked fairly well), now want to incorporate into the life of the University every element and device of legal procedure they can conceive of, however inappropriate to the given context of decision. It took lawyers centuries to evolve systems of legal procedure appropriate to the varying contexts of legal decisions. Academia cannot hope to evolve a system of academic due process instantaneously. Under the circumstances, it is a mistake to appropriate legal forms and processes to academic life without examining their fitness to the special circumstances in which they are to be used.

Here again I note, however, what is wrong in this respect is not trade unionism, but rather creeping legalism. Moreover, collective bargaining can help - in our case, actually has helped - the University avoid some of this creeping legalism.

The third of the hobgoblins said to appear as a result of academic collective bargaining is the deterioration of departmental

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and school autonomy. The fact is that such a deterioration is, indeed, taking place because of a very complex series of causes having very little if anything to do with unionization. To pose this as a consequence of the trade union movement simply mistakes the real nature of what is happening in academic life today. Departmental and school autonomy is indeed breaking down, - probably should be breaking down - but it is not at all a function of collective bargaining.

Fourth, we are told, collective bargaining thrusts administrators into an unfamiliar and unwanted management role. Contract administration, with its emphasis on legalism, its grievance laden tendencies, and its use of adversary proceedings, will almost inevitably change the tone of the university administration and tend to polarize the campus.

Does collective bargaining thrust administrators into a management role? In fact, administrators should have assumed such a role years and years ago. What has been wrong with many of our great universities is that they were badly managed. To lay at the feet of collective bargaining the fact that presidents of universities are going to have to become good managers does not seem to me to impose a burden which they should not want to undertake quite willingly.

Further, I am not persuaded that there is any great polarization on my campus as a result of collective bargaining.

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It is true that there is an AAUP newsletter which takes off after me monthly, but that is part of the game and I do not take it to be unfair or inappropriate.

The fact is that the differences of opinion which now appear in overt form existed in covert form before. The polarization had already taken place, long before the trade unions came on campus. They are not so much the cause of polarization as they are its current agent. With effective trade union leadership, however, and with an effective relationship between a university president and that leadership, the polarization will tend to diminish rather than increase. That has been the experience with the trade union movement in other segments of our economy and I think it will happen in academic life as well.

The fifth of the monsters in the unionization chamber of horrors is said to be that inevitably the scope of authority given to faculty senates will either be narrowed or the senate will be dominated by the union. Neither of these consequences has occurred at our State University. To the contrary, our University Senate's range of authority has broadened, and this has happened without its having become dominated by the AAUP. The AAUP plays a part in the senate and I am occasionally concerned in the case of certain debates within the Senate about the role some of the leadership of the AAUP plays. But

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on the whole, the Senate's powers have increased and the AAUP has not dominated the Senate. The Senate has been an independent, alternative voice.

Sixth, the suggestion is made that the adversary relationship implicit in collective bargaining is inimical to collegiality. Now by collegiality, I take it that we all mean the rights, powers, and duties of a group of people which arise out of their common pursuit.

We are indeed witnessing the break-up of collegiality. But again I suggest to you that this is not a consequence of the trade union movement. Collegiality had broken down at Bennington College without a trade union. What has happened is that our faculty and our student body and even our boards of governors have now found that their interests are not as common and not as united as they once were. There is now a frank recognition that there are adverse interests.

If the platonic notion that in the university we all march forward together in search of the idea of truth ever had any validity, it now does not seem consistent with the facts of our life. There are significantly different interests represented on campus, and once you have those different interests represented, the old system of collegiality had to break down.

What we find happening, therefore, is that the trade union movement has caused us to recognize an organized spokes-

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man for the faculty interest, and it has thereby invited recognition of other interests on campus adverse to those of the faculty. In the case of a college or university that is unionized, the difference is not that we suddenly find adverse interests where none appeared before, but rather that we find an adverse interest represented **by** an organized group of faculty who identify with that interest. This development has some good features and some bad features, but again I say that the breakdown in collegiality is not the result of the trade union movement, but rather of other, more fundamental changes in the nature of academic life.

Finally, in this catalogue of the consequences of academic collective bargaining, there is the thought that bargaining is a form of compromise, inferior to consensus and the reasoning together which was part of traditional academic governance procedures. What we have now is negotiation rather than deliberation, power rather than reason.

Well, I sat through the faculty meetings at Bennington College for six years without a trade union, and I am not at all persuaded we did not negotiate there as well as deliberate. I am persuaded that the Bennington faculty supplanted reason with power on occasion, even before though there was no faculty trade unions.

Power and compromise have been part of academic life, I would suppose, for as long as it has existed. What we now have

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is a more frank and explicit recognition of the role of power and compromise within the academic community. In my experience, bargaining with trade union groups is no cruder, no more emotional, no less or more fraught with power struggles, than my bargaining -- only we called it discussion then -- with a non-unionized faculty group at Bennington College.

In conclusion, let me say that what we have seen happening for the past ten years or so is indeed the breakdown of the collegial system. In legal terms, we have seen a change from a social context in which rights and obligations arose out of status to one in which rights and obligations arise out of consensual agreement.

In the history of law, this is the origin of the theory of contract. Prior to the existence of contract as a recognizable form of legal relationship, most rights and obligations in law arose out of status relationships. What we now find is that for a variety of reasons that status-based relationship within the university has broken down and in its place we have to begin making agreements.

Under such circumstances, we have only two alternatives. We either make agreements with each individual in a faculty or you make an agreement, which will cover them all, with an organized group of faculty who represent that faculty in their common interests. When I think of my attempts to reach in-

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dividual agreements at Bennington, with a faculty of 65, and compare that with my attempts to reach an agreement at Rutgers University, with a faculty of 2500, I much prefer the Rutgers situation. It gives me a group of faculty with whom I can sit down knowing they speak as well as any individual or group can for the interest of the entire faculty.

There is, of course, a seeming conflict of role between a group of people who want to, on the one hand, share governance with the administration and, on the other hand, bargain against it. There is also a seeming conflict of role between a group of faculty which acts as agent or delegee of the governing body in determining academic policy, while also making claims against that governing body in terms of the other perquisites of academic life.

However, in my experience, the contradictory nature of those roles is a theoretical possibility, rather than in fact. The contradictions dissolve because different faculty perform the bargaining role than perform the role of delegee of the board of governors in the matter of academic governance. If the same people attempted to do both - and that is why I alluded earlier to my concern about officers of the AAUP taking leadership roles in the university senate - there would indeed be a conflict of roles. But as it works out in practice, I do not see that contradiction occurring.

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My final observation concerns the problem of the system of peer evaluation in the selection and promotion of faculty when subject to a collective bargaining grievance procedure. It illustrates most forcefully some of the strengths and some of the weaknesses of our collective bargaining situation. It illustrates a paradox of collective bargaining in the university, having no counterpart in industrial bargaining.

As I look at the grievance cases which came before me as president of the university last year, an overwhelming percentage of them were not against the administration at all. They were grievances by individual faculty members arising out of action taken by their peers in the promotion process. In these grievances, the AAUP was in a most difficult position. The grievance was not between an AAUP member and management or the administration. It was rather between an AAUP member and a group of his peers who were also AAUP members. In other words, the alleged contract violation was not perpetrated by management, but rather by AAUP members.

I had no interest in these grievance proceedings except to preserve the integrity of the peer promotion process. The AAUP had an interest in protecting the rights of the faculty, but there were two conflicting faculty rights involved in these grievance. One, the right of the individual concerned, who wanted and had a right to academic due process. The other, the right of the faculty, which wanted to maintain peer evaluation

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as a necessary element of the promotion process.

This dilemma illustrates both the strength and the weakness of collective bargaining and unionization. What we are required to do is to support the peer evaluation system, which is essential to the traditional role of the faculty, while imposing upon it the requirements of academic due process, which is a function of the unionization process.

In conclusion, I hope I have given you some evidence, at least from my very limited perspective, that the fears which many people have expressed concerning the development of trade unionism are grossly overstated. I do not say there is no reason for concern. But on balance, my suggestion to any university or college president is to welcome and support the development of strong faculty collective bargaining.
